

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**FEB 6 2002**

**PATRICK FISHER**  
Clerk

JAMES SHAW,

Plaintiff-Appellant,

v.

COLORADO DEPARTMENT OF  
CORRECTIONS, MEDICAL  
DEPARTMENT,

Defendant-Appellee.

No. 01-1525  
(D.C. No. 01-Z-636)  
(D. Colo.)

**ORDER AND JUDGMENT\***

Before **TACHA**, Chief Judge, **EBEL** and **LUCERO**, Circuit Judges.

We will exercise jurisdiction over this appeal despite the apparent untimeliness of Shaw's notice of appeal because the district court failed to enter judgment on a separate document, as required by Federal Rule of Civil Procedure 58. Under such circumstances, judgment is not final, but we nevertheless will

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\*After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

address the merits in the interest of efficiency and judicial economy. See Clough v. Rush, 959 F.2d 182, 185-86 (10th Cir. 1992).

As recognized by the district court, Shaw's section 1983 suit against the Colorado Department of Corrections is barred by the Eleventh Amendment. See Griess v. State of Colorado, 841 F.2d 1042, 1045 (10th Cir. 1988). Accordingly, the district court's dismissal of the complaint was appropriate.

### **CONCLUSION**

The district court's dismissal of Shaw's complaint is AFFIRMED. We will not consider Shaw's motion to amend his complaint, as it was not raised below and thus is not properly before us on appeal. Shaw's motion to proceed without prepayment of the filing fee is DENIED. The unpaid balance of the filing fee is due and should be paid immediately.

ENTERED FOR THE COURT

David M. Ebel  
Circuit Judge